IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

WRIT PETITION NO.7716 OF 2004

Food Corporation of India ...Petitioners
through its Managing Director,

Vs.

Food Corporation of India ...Respondents
Workers' Union & Ors.

Mr.P.M.Pradhan, Advocate for Petitioners

Indira Jaising, Mr. Bharat Sangal Advocates i/b. M.s Hutoxi Tavadia for Respondent No.1.

Mr. S.P. Pipal Advocates for Respondent Nos.2 to 18.

Mr. J.G. Gadkari with Mrs. Ranjana Todankar
Advocate for Respdt. Nos.19,20 & 21.

Mr.Jaiprakash Sawant Advocate for Respondent No.18

CORAM: R.M.S.KHANDEPARKAR,J.
DATED: 14TH OCTOBER, 2004

P.C.

1. Heard the Advocates for the parties. Perused the records.

2. The Petitioners challenge the interim award passed by the Industrial Tribunal on 27th May, 2004, by which the petitioners have been directed to pay the additional sum of Rs.50/-to each of the workmen on all working days under Direct Payment System, no work no pay system by the Management Committee in addition to what they are being paid for every day

for the services rendered by them.

3. Upon hearing the learned Advocates for the parties and on perusal of the records, the Petition, in fact, is liable to be dismissed in limini based on the observations made by the Apex Court in its order passed in Writ Petition (Civil) No.422 of 2000 delivered on 5th April, 2002, copy of which is found to be placed along with the Petition at pages 49 to 55, and the findings arrived at by the Industrial Tribunal in the impugned order, which are not seriously disputed by the Petitioner. The relevant observation in the Apex Court order reads thus:-

> ". In the Counter - affidavit filed on behalf of the first respondent, it is not disputed that the nature of work done by the DPS workers and the departmental workers is substantially the same."

And the relevant finding in the impugned order is that :-

> ". In fact the FCI does not deny that workmen serving under the above system are not paid same amount for the same work."

4. The records, prima facie, disclose sufficient material to justify an interim relief once it prima facie discloses discrimination between the permanent workmen and the workmen serving under the concerned system inspite of the fact that qualitatively and quantitatively the work rendered by both types of workmen is the same. Though the learned Advocate appearing for the petitioner sought to argue strenuously that the Tribunal while granting interim relief did not take into consideration various materials necessary to arrive at the finding in support of justification for grant of the relief which has been granted under the interim award, the fact remains that the prima facie finding regarding the service rendered by both types of workmen being quantitatively same has been arrived at, after taking into consideration whatever material which was placed before the Tribunal and not by ignoring the same and therefore the same does not warrant interference in Writ jurisdiction. It cannot be said that on the basis of materials referred to in the impugned award it would not warrant the view taken by the Industrial Tribunal. The finding apparently is on proper assessment of the said materials on the aspect of the quantitative and qualitative similarity in the services rendered by both types of workmen.

5. The impugned order on the face of it

discloses, apart from the above referred materials, an analysis of the other materials on record which reveal that though there has been a substantial revision in the wages payable for stacking and dis-stacking of bags in respect of the permanent workmen, in case of the workmen for whose benefits the impugned order has been passed, it is increased from Rs.2.05 to Rs.2.19 i.e. at the rate of 14 ps. per bag. In addition, the departmental employees receive various other benefits and facilities which are not available to the workmen in whose favour the impugned Award has been passed. Considering these aspects, and the finding having been arrived at, on those materials and the well established principle of law which has been reiterated in Writ Petition No.422 of 2000 to the effect that in cases of claim on the basis of equal pay for equal work various facts need to be considered while arriving at the final decision in the matter, and the Tribunal in the case while dealing with the application for interim order having considered all the relevant aspects taking into consideration whatever material placed on record, there is hardly any scope for interference in the impugned order. It merely directs payment of Rs.50/- per day per workman instead of Rs.100/- as demanded by them in addition to their wages payable for all working days to such workman. Apart from that it has been fairly submitted by the learned Advocates for respondents that they have no objection for

clarification that such payment of Rs.50/- would be restricted to the working days on which the workmen actually render the services and not to non-working days or on the days on which the workmen do not render any service.

6. It was also sought to be contended on behalf of the Petitioners that while issuing direction for payment of Rs.50/- per day per workman, the Tribunal has not considered the issue in relation to the security to the petitioner in the sense that the Petitioners would be at loss in case ultimately respondents fail to establish their case for increase in the wages. The contention is totally devoid of substance as the impugned order specifically refers to the prima facie case for the justification for such a grant in view of the facts disclosed from the records regarding the increase in wages in relation to the departmental labour as compared to the respondent workmen, besides being that the payment which is being ordered is not exgratia payment as such ,but it relates to the services rendered by the workmen. Any payment to be made taking into consideration the services to be rendered by the workmen can hardly be said to have been ordered ignoring the case of the petitioners. In fact on the detail analysis of the materials on record the prima facie finding regarding the discriminatory treatment given to the departmental employees in comparison to

the respondent workmen, evidently justifies the grant of interim relief in the nature granted by the Tribunal. Being so, neither in law nor in equity there is any case made out for interference in the impugned order apart from clarification as rightly submitted by the respondents that an additional payment of Rs.50/- per day per workman would relate only to those days on which the work will be actually rendered by the workers. With this clarification in relation to the impugned award, the petition is rejected.

(R.M.S.KHANDEPARKAR,J.)